

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EUGENE L. JACKSON,

Defendant-Appellant.

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UNPUBLISHED

April 1, 2003

No. 236354

Wayne Circuit Court

LC No. 00-008476

Before: O’Connell, P.J., and Fitzgerald and Murray, JJ.

PER CURIAM.

Defendant appeals as of right his convictions of possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v), possession of marijuana, MCL 333.7403(2)(d), and possession of a firearm during the commission of a felony, MCL 750.227b, entered after a bench trial. We affirm.

Defendant was originally charged with delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv), delivery of marijuana, MCL 333.7401(2)(d)(iii), felony-firearm, and carrying a concealed weapon (CCW), MCL 750.227. The police executed a warrant for the search of a residence from which they had information that narcotics were being sold. An officer testified that the police knocked on the door of the residence and announced themselves in a loud manner, but that loud music was playing in the residence and he did not know if the occupants heard the announcement. The officers received no response, and waited fifteen to twenty seconds before forcing entry into the residence. Two officers testified that defendant was in the dining room of the residence, and that they observed the outline of a handgun under his shirt. A search of defendant’s person revealed plastic bags containing crack cocaine and marijuana, and a large amount of cash. Defendant testified that he was visiting at the residence where the raid occurred. He acknowledged that persons knocked on the door and windows and identified themselves as police officers, but contended that before anyone could respond the officers forced entry into the residence. Defendant denied that he had narcotics, a gun, or a large amount of cash on his person, and denied that loud music was playing when the officers forced entry into the house.

The trial court found defendant guilty of possession of less than twenty-five grams of cocaine, possession of marijuana, and felony-firearm, and acquitted him of CCW.<sup>1</sup> The court

<sup>1</sup> The trial court stated no reason for its decision to acquit defendant of this charge.

found the officers' testimony that defendant had narcotics and a weapon on his person to be credible, and accepted it. The court rejected the testimony given by defendant. The court found that the prosecution did not prove beyond a reasonable doubt that defendant possessed the narcotics with the intent to deliver them.

MCL 780.656, the knock-and-announce statute, requires that police officers knock and announce themselves prior to entering a residence or building to execute a search warrant. When a violation of the knock-and-announce statute also comprises a violation of the Fourth Amendment protection against unreasonable searches and seizures, suppression of the evidence is the appropriate remedy. However, a statutory violation that does not also offend the constitution does not mandate suppression of the evidence. *People v Howard*, 233 Mich App 52, 55-57; 595 NW2d 497 (1998). The knock-and-announce statute does not control the execution of a valid search warrant. The statute merely delays the entry of the police into the place to be searched. Violation of the knock-and-announce statute is subject to the inevitable discovery exception. If the prosecutor establishes by a preponderance of the evidence that the challenged evidence would inevitably have been discovered, the evidence need not be suppressed. *People v Stevens (After Remand)*, 460 Mich 626, 643-647; 597 NW2d 53 (1999).

Defendant argues that the method by which the police gained entry into the residence violated the knock-and-announce statute, that the subsequent search of his person was illegal, and that the police lacked probable cause to arrest him. We disagree and affirm defendant's convictions. Defendant did not move to suppress the evidence in the trial court; therefore, reversal is warranted only on the basis of plain error. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). The trial court had no opportunity to address defendant's arguments; however, we conclude that no violation of the knock-and-announce statute occurred. The evidence showed that the police knocked on the door of the residence and announced themselves in a loud manner. The police received no response, and waited for fifteen to twenty seconds before forcing entry into the residence. A wait of this length is sufficient. See *People v Humphrey*, 150 Mich App 806, 814; 389 NW2d 494 (1986) (twenty-to-thirty second wait sufficient). Cf. *People v Polidori*, 190 Mich App 673, 677-678; 476 NW2d 482 (1991) (three-to-six second wait insufficient). The manner by which the police gained entry to the residence did not violate the knock-and-announce rule. MCL 780.656.

The police gained lawful entry to the residence to execute a search warrant--the validity of which defendant does not dispute. However, even if we were to assume arguendo that the police violated the knock-and-announce statute, suppression of the evidence would not be required because its discovery was inevitable. *Stevens, supra*. Officers observed the outline of a handgun under defendant's shirt. A weapon need not be invisible to be concealed. A weapon is concealed if it cannot easily be seen by those who come into contact with the carrier. See *People v Jackson*, 43 Mich App 569, 571; 204 NW2d 367 (1972). The facts known to the officers gave them probable cause to arrest defendant for CCW. *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996). The narcotics were discovered in a lawful search of defendant's person incident to arrest. *People v Catanzarite*, 211 Mich App 573, 581; 536 NW2d 570 (1995). No error occurred.

Affirmed.

/s/ Peter D. O'Connell  
/s/ E. Thomas Fitzgerald  
/s/ Christopher M. Murray